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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,328	10/03/2000	Yasuo Takane	0905-0247P-SP	4817

7590 07/28/2005
 BIRCH, STEWART, KOLASCH & BIRCH, LLP
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 Falls Church, VA 22040-0747

EXAMINER

AGGARWAL, YOGESH K

ART UNIT	PAPER NUMBER
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2615

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/678,328	Applicant(s) TAKANE, YASUO	
	Examiner Yogesh K. Aggarwal	Art Unit 2615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1 and 10.
 Claim(s) withdrawn from consideration: 2-9, 11 and 12.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____


DAVID L. OMETZ
PRIMARY EXAMINER

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Examiner's response:

1. Applicant argues with respect to claims 1 and 10 that Examiner has relied in Ejima et al. (US Patent 5,070,405) to teach the same claim elements in the previous rejection which applicant argued were improper, wherein specifically the claimed limitations of an image file create device for creating an image file containing the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device. **The Examiner respectfully disagrees.** In the final office action mailed 11/02/2004, Anderson (6,011,585) was used to disclose an image file-creating device for recording exposure values and an image data recording field in an image file and not Ejima reference. Ejima was used to disclose divisional photometry. Examiner had found the arguments persuasive because Anderson reference did not clearly disclose that a photometry device was outputting the exposure values. Therefore, the final office action was withdrawn because the arguments against Anderson reference were found persuasive and not Ejima reference. In the office action mailed 04/08/2005, Ejima reference has been used to teach the same claimed limitation of divisional photometry. The Examiner requests the applicant to clearly point out why a new official action should be issued because both rejections are consistent.

2. Applicant argues that Kikuzawa fails to teach divisional photometry to create an image file containing the image data and data representing photometry values for each of the sections of an image file. Kikuzawa is used to teach that an image file portion 46 (video area shown in figures 1 and 2) and an exposure control portion obtained from a white balance sensor in the same recording device in the portion DA1 (figure 5 and 6) which are being read as an image file. A file is defined as a collection of data stored and dealt with as a single, named unit. Kikuzawa

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teaches a video area 46 and a white balance exposure portion (DA1) stored within a single unit, namely VTR. Ejima is used for teaching divisional photometry.

3. Applicant argues that an image file is not taught in either of the references. The Examiner disagrees. Kikuzawa clearly states that the image video signal is input from a terminal 'a' and also recorded on the VTR portion 46 as shown in figure 2 under the control of a recording system control portion 306 (col. 4 lines 32-44) and is therefore read as an image file creating device.

4. Applicant argues that Kikuzawa is directed towards recordation and control of video signals and not image signals. Kikuzawa clearly states at numerous places in the text that a video area 46 is used for storing the video signals (col. 1 lines 32-39, col. 1 lines 45-47, col. 4 lines 33-37) along with other camera information.

5. Applicant argues that one skilled in the art would not be motivated to combine the teachings of Kikuzawa and Ejima. The Examiner respectfully disagrees. The motivation to combine the references has been explicitly taught in the Ejima, the secondary reference. Ejima teaches that when the difference in quantity of light between portions of the object to be photographed is great by examining the output of divisional photometry elements 21a-21e, very weak contour enhancement is done so that the image appears natural (col. 6 lines 3-51). Therefore it would be obvious to one skilled in the art at the time of the invention to have been motivated to have used the Ejima reference to teach divisional photometry and store those values in a file as taught by Kikuzawa reference. Examiner respectfully requests the Applicant to point out why Ejima cannot be combined with Kikuzawa reference or if it is hindsight where in the applicant's specification is this motivation used.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh K. Aggarwal whose telephone number is (571) 272-7360. The examiner can normally be reached on M-F 9:00AM-5:30PM.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on (571)-272-7593. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YKA
July 19, 2005


DAVID L. OMETZ
PRIMARY EXAMINER